

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #9	CCRB Case #: 201506325	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/24/2014 6:00 PM	Location of Incident: Lexington Avenue and Lewis Avenue	Precinct: 81	18 Mo. SOL 1/24/2016	EO SOL 1/24/2016	
Date/Time CV Reported Fri, 07/31/2015 8:51 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/31/2015 8:51 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Xylas	11251	948160	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Ere Powers	05297	944907	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mark Xylas	Abuse: PO Mark Xylas searched the car in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]

### Case Summary

At approximately 4:00 p.m. on July 24, 2014, § 87(2)(b) and § 87(2)(b) were in § 87(2)(b)'s 2002 Silver Ford Taurus driving westbound on Lexington Avenue in Brooklyn. § 87(2)(b) was the driver while § 87(2)(b) was sitting in the front passenger's seat. Upon reaching the intersection of Lexington Avenue and Stuyvesant Avenue, which is a four-way stop intersection, § 87(2)(b) rolled through the stop sign without coming to a full stop. After driving for approximately one-half block, § 87(2)(b) noticed an unmarked police car with its lights and sirens turned on driving behind him. § 87(2)(b) immediately pulled over on the side of the road near the intersection of Lexington Avenue and Lewis Avenue. Two officers, identified via investigation as Sgt. Erek Powers and PO Mark Xylas of the 81<sup>st</sup> Precinct, exited from their vehicle and approached § 87(2)(b)'s car. PO Xylas approached the driver's side while Sgt. Powers approached the front passenger's side. Upon reaching the car, § 87(2)(b) attempted to hand PO Xylas his documentation, however PO Xylas told § 87(2)(b) to exit his car. § 87(2)(b) complied, at which point he was taken to the rear of his car. § 87(2)(b) was also asked to exit the car by Sgt. Powers, and he too was taken to the rear of the car.

While § 87(2)(b) and § 87(2)(b) were sitting on the rear bumper of § 87(2)(b)'s car, PO Xylas returned to the driver's side door, entered § 87(2)(b)'s car, and allegedly searched underneath the front and back seats, and the glove compartment, which had previously been closed (**Allegation A**). After searching § 87(2)(b)'s car for approximately one to two minutes, PO Xylas returned to the rear of the vehicle with a knife in his hand, which he stated had been recovered from the car. Sgt. Powers then informed PO Xylas that while PO Xylas was conducting the car search, he checked § 87(2)(b) and § 87(2)(b) for warrants, and that the search for § 87(2)(b) came back positive. § 87(2)(b) and § 87(2)(b) were both then placed under arrest. § 87(2)(b) was charged with § 87(2)(b) while § 87(2)(b) was ultimately released without receiving either a summons or a desk appearance ticket.

§ 87(2)(b)

This case was reassigned from Investigator Ethan De Angelo to the undersigned on September 14, 2015, upon the former's promotion to Investigative Manager.

### Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s pending criminal charges stemming from this incident, this complaint was ineligible for mediation.
- On September 14, 2015, a FOIL request was filed with the Office of the NYC Comptroller regarding whether a Notice of Claim has been filed in connection to this incident. On September 15, 2015, the FOIL request was returned by the Office of the NYC Comptroller, indicating that § 87(2)(b) has not filed a Notice of Claim.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the second CCRB complaint filed by § 87(2)(b) (See Board Review #3)
- PO Mark Xylas has been a member of the service for six years, and there are two substantiated allegations that have been made against him.
  - In case number 201407556, an allegation of premises entered and/or searched, as well as an allegation of threat to damage/seize property has been substantiated. Charges were recommended, and the case is pending administrative trial.

### **Potential Issues**

- As discussed above, this case was filed by § 87(2)(b) over one year after the date of the incident occurred.
- On August 27, 2015, § 87(2)(b) who resides in New Jersey, provided an official statement over the telephone. The undersigned informed § 87(2)(b) that a verification form would be sent to him, and that he would have to have the verification form signed and notarized before returning it to the undersigned. On August 27, 2015, Inv. De Angelo sent a verification form, along with instructions and a returned stamped envelope to § 87(2)(b) § 87(2)(b)'s confirmed address. § 87(2)(b) failed to return the verification form to the undersigned. On September 11, 2015, Inv. De Angelo contacted § 87(2)(b) who stated that he had not received the verification form. The undersigned confirmed § 87(2)(b)'s address, provided him with instructions to have the verification form signed and notarized, and sent him a second verification form along with a stamped return envelope. As of the writing of this report § 87(2)(b) has failed to return the verification form.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) alleged that the officer who searched his car was the officer who damaged his front dashboard panel. § 87(2)(b) described this officer as a white male, in his mid-20's who stood approximately 5'11" tall with a thick build. PO Xylas, who is a § 87(2)(b)-old white male, acknowledged entering § 87(2)(b)'s car and removing the knife. § 87(2)(g)

#### **Allegations not pleaded**

- § 87(2)(g)

- § 87(2)(g) [REDACTED]

**Allegation A – Abuse of Authority -PO Mark Xylas searched the car in which § 87(2)(b) was an occupant.**

It is undisputed that PO Xylas pulled § 87(2)(b)'s car over and that he conducted a search of § 87(2)(b)'s car. It is undisputed that PO Xylas recovered a knife from § 87(2)(b)'s car. It is also undisputed that § 87(2)(b)'s front driver's side window was rolled down at the time in which PO Xylas and Sgt. Powers approached his car.

§ 87(2)(b) alleged that after being asked to step out of his car, and taken to the rear bumper, PO Xylas returned to the front driver's side door, and entered his car. § 87(2)(b) who stated that he could see PO Xylas by turning his head and looking through the rear windshield of his car, alleged that PO Xylas searched underneath the front and rear seats of the car, as well as through the glove compartment. After searching the car for approximately one to two minutes, PO Xylas then returned to § 87(2)(b) and § 87(2)(b) at the rear of the car, where he displayed a knife he said he recovered from the inside of the car. § 87(2)(b) denied that the knife was his, or that he had ever seen it before. He also denied that having any knowledge as to the knife being inside of his car prior to the car stop.

In his telephone statement § 87(2)(b) acknowledged that he had placed a knife he owned, and which he could only describe as "little," in an open coin-holder area located underneath the front center car radio. In his official, though unverified, testimony, § 87(2)(b) denied ownership of the knife, and denied having any knowledge as to the knife's size, or shape.

PO Xylas testified that upon arriving at the front driver's side seat Sgt. Power's, who was standing at the front passenger's side window, gave him a signal with his eyes to look into the car. Upon looking into the car, PO Xylas observed a folded knife laying in plain view on top of an uncovered center console. PO Xylas described the center console as an open, uncovered, low-lying console. After observing the knife, PO Xylas told both § 87(2)(b) and § 87(2)(b) to exit their car, and to step to the rear of the vehicle, which they did. After § 87(2)(b) and § 87(2)(b) were taken to the back of the car where Sgt. Powers could watch over them, PO Xylas returned to the front driver's side door, entered the car, and retrieved the knife. After he retrieved the knife, PO Xylas conducted a quick test which revealed that the knife was in fact a gravity knife (See Board Review #'s 6 and 8). PO Xylas denied searching any other part of the car, and did not look underneath any of the seats, or in the glove compartment. PO Xylas did not recover any other weapons or contraband from § 87(2)(b)'s car.

Sgt. Powers' testimony corroborated the testimony of PO Xylas.

Both Sgt. Powers and PO Xylas identified § 87(2)(b) and § 87(2)(b) as § 87(2)(e), § 87(2)(f) § 87(2)(b). PO Xylas had previously been involved in arresting § 87(2)(b) for an incident occurring in § 87(2)(b) and had recognized § 87(2)(b) from NYPD arrest photographs posted in the 81<sup>st</sup> Precinct stationhouse.

A warrantless search of a vehicle is permitted when the police have probable cause to believe the vehicle contains contraband, a weapon, or evidence of a crime. People v. Vargas, 89 N.Y.S. 2d 931 (2011-2d Dept.)(See Board Review #7)

If after a lawful traffic stop an officer has a reasonable basis to fear for his safety, he may take any action that is reasonable under the circumstances, including searching the vehicle. People v. Cross, 59 N.Y.S. 2d 851 (2007-2d Dept.) (See Board Review #7).

§ 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date